

This result occurs regardless of whether satellite DARS is supported by advertising or subscription fees, or what types of advertising avails it supplies. . . The point is that, for purposes of analysis, audience impacts are primary driver. Smaller audiences translate into reduced sales of advertising to both local and national advertisers, notwithstanding DARS suppliers' focus of subscriptions or national advertisers for support.

SPR Study at 37-38.¹¹⁵

Thus, given that the introduction satellite DARS will inevitably deliver a competitive blow to terrestrial stations, the Commission should adopt what reasonable measures it can to ensure that this blow is not a "knockout" for the terrestrial radio industry. Considering the Commission's available regulatory options, the NAB believes that authorizing DARS on a subscription-only basis will introduce at least some measure of complementary and differentiation between satellite DARS service and terrestrial radio. A subscription requirement will help to minimize the direct impingement by satellite DARS providers into markets for advertising sales.

Furthermore, a subscription requirement will provide satellite DARS providers with the economic framework that will permit them to deliver on their promise of providing niche programming to specialized or geographically dispersed markets. As the Commission reasoned with respect to the introduction of DBS services over a decade ago, the availability of pay services "may give small groups of viewers with intense interests an opportunity to pay to receive programming that could not be presented profitably by advertiser-supported stations. A nationwide service that can tap small, geographically dispersed audiences also makes

¹¹⁵ See also, Kagan Study at 5 ("Although subscriber supported services would not appear to propose a direct threat to local broadcasters' revenue base, the audience fragmentation likely to occur from the deluge of programming options could severely handicap traditional radio broadcasting at a time when the industry is just recovering from hundreds of frequency allocations made by the FCC in the 1980's.").

possible more specialized programming."¹¹⁶ Adopting a subscription model will promote the same possibilities with respect to satellite DARS service.

It is true, as the Notice observes, that the Commission introduced interim DBS systems in the early 1980's with slightly more regulatory flexibility than the NAB proposes here with respect to satellite DARS service -- at least insofar as DBS licensees were not required to operate under a pre-specified service classification or a subscription-only requirement.¹¹⁷ Yet, on this point, the development of DBS service is instructive: all of the presently-existing high- and medium-powered DBS licensees -- DIRECTV, United States Satellite Broadcasting Co., and Primestar -- provide DBS on a subscription-only basis. In addition, as the Notice points out, three of the four current satellite DARS applicants have openly declared their intent to provide satellite DARS on a subscription basis, *i.e.*, pursuant to a "private contractual relationship with the subscribing audience using a scrambled signal," which indeed is the very reason that the Commission has concluded that satellite DARS service as a whole should be regulated as a non-broadcast service.¹¹⁸ Thus, as a practical matter, a subscription requirement is not likely to impose a significant hardship on satellite DARS providers, since all indications are that it will be the predominant choice of the providers themselves in any event.¹¹⁹

¹¹⁶ See Inquiry into the development of regulatory policy in regard to Direct Broadcast Satellites for the period following the 1983 Regional Administrative Radio Conference, Report and Order, 90 FCC 2d 676, 682 (1982) ("DBS Report and Order").

¹¹⁷ See Notice at ¶ 26; Inquiry into the development of regulatory policy in regard to Direct Broadcast satellites for the period following the 1983 Regional Administrative Radio Conference, Report and Order, 90 FCC 2d 676, 708 (1982).

¹¹⁸ Notice at ¶ 24.

¹¹⁹ See also Remarks by Commissioner James H. Quello Before the California Broadcasters Association Annual Convention (July 17, 1995) ("Ideally, DARS should be instituted as a multi-channel subscription service.")

More fundamentally, although DBS is in some respects a useful analogy in addressing satellite DARS issues, the history and competitive development of DBS service are quite different from satellite DARS. DBS operators, for example, compete in a market for multichannel video services that even today is still controlled by cable television providers. Regulatory flexibility that may make eminent sense in the context of introducing the benefits of competition to cable television's dominance in the multichannel video marketplace makes far less sense in a market for radio services that is already vibrantly competitive, and where the Commission's challenge, from a public interest standpoint, is to introduce satellite DARS in a manner which preserves the benefits of the local, community-oriented service provided by terrestrial broadcasters. Unlike DBS, where the Commission concluded that the record did not "show that DBS systems will affect local broadcasters to a critical extent,"¹²⁰ the evidence presented in the attachments hereto suggests a high probability that satellite DARS, if not properly introduced into the radio marketplace, will pose a substantial threat to many valuable aspects of local broadcasting.¹²¹ The Commission can mitigate that threat to some extent by licensing satellite DARS on a subscription-only basis, and the NAB urges it to do so.

¹²⁰ DBS Report and Order, 90 FCC 2d 691.

¹²¹ See, e.g., SPR Study, at 137 ("The thing that just scares the heck out of me is that we are operating with an extremely tight margin. We were able by cutting the staff by 70 percent to get back to the place where the station takes in more than it spends. If an additional percentage is siphoned off by any other type of activity, if instead of 80-90 they have 90-100 or if they have satellite service or whatever, we are in trouble. We'd have to cut again and there's not much left to cut. We may not be able to make it.") (Statement of Cary Simpson, President and CEO, Allegheny Mountain Network, Coudersport, Pennsylvania).

2. Public Interest Obligations

While it is useful for the Commission to consider ways in which satellite DARS service requirements may be further tailored to serve the public interest, the Commission should recognize that there are certain categories of local public service programming that satellite DARS simply cannot provide or, more importantly, replace.

Both the blessing and the curse of satellite-delivered service is that it is an inherently nationwide distribution medium -- one which in this instance will compete with local terrestrial stations for audience, but cannot and will not supply the local, community-focused public service programming that terrestrial radio stations presently offer. Ironically, as terrestrial stations, and particularly those stations in smaller markets, are forced to economize their operations even further to meet this new competition, they will do so by moving to deliver radio programming via satellite networks (if they do not "go dark" altogether). The net result will be that local, community-oriented public service programming will be reduced, and in some instances will simply disappear.¹²²

Although the Commission can attempt to minimize such negative public interest effects, some reduction in locally-focused public service programming is in the NAB's view an

¹²² See, e.g., *Id.*, at 57 ("The other side of the coin is when you have fellows that drop signals in here from a satellite. They're not going to compete with us for the local dollars, but they are going to compete with us for local audience. That will weaken us. . . . We could cut our costs by tomorrow opening up with four employees. We could possible get by with three employees. We've got everything we need, including the satellite link. If we reduced our billing 50 percent by doing that, we'd still make a profit and probably make a better profit than we do now. But would we actually be serving the community? The answer is "no." Because our news would be from the Louisiana network. We'd no longer have local news. We wouldn't have remote broadcasts. We would have national music, state news and local commercials. And that's it! I could close this building, put the station in a 12' X 40' mobile home and still be on the air. But I'd hardly be a local station anymore. Who gains from that outcome?") (Statement of Paul Cook, Owner, KQKI-FM, Morgan City, Louisiana).

irreducible part of the Commission's public interest tradeoff in authorizing satellite DARS service in the first instance.¹²³ At some level, the loss of community-oriented programming cannot be compensated for through the imposition of public interest obligations on satellite DARS licensees because such obligations cannot change the inherent nature of satellite-delivered service.

Thus, the real question from a public interest standpoint in assessing satellite DARS service is: What is the public gaining in return for an inevitable loss of local programming? With respect to public interest obligations, the NAB believes that the Commission's efforts are most productively spent ensuring that its public interest tradeoff in sacrificing potentially significant levels of local radio service will be (at least partially) justified.

Specifically, there are unique public interest benefits that have been continually proffered by satellite DARS proponents as justifications for the authorization of the service. Chief among these have been the promises that satellite DARS providers will offer "new services to rural listeners, minority and ethnic groups, and non-English speaking audiences."¹²⁴ CD Radio, for example, has emphasized the "social diversity" that can be achieved through

¹²³ Put another way, as SPR observes, the Commission's efforts to promote competition and local service in radio broadcasting ironically have begun to prove counterproductive, at least in terms of the amount of local, community-oriented programming that is produced:

As stations have proliferated and audiences have fragmented, stations have been under greater and greater pressure to economize, often simply to survive. That pressure has translated into reductions in staff and locally originated programming. So we increasingly confront the ironical situation of an extensive system of local broadcast distribution outlets, created to promote the creation and distribution of locally-oriented programming, actually transmitting ever growing amounts of non-local programming under threat of competitive survival. *Id.*, at 46.

¹²⁴ See Notice at ¶ 12; see also DARS Allocation Order, 10 FCC Rcd 2310, 2311-12, 2314, at ¶¶ 9-11, 22 (principal benefits of DARS allocation will be service to markets either unserved or underserved because of geographical, social or economic considerations, including minority ethnic and cultural interests that otherwise might not receive programming directed to a narrow audience).

satellite radio, and proposes national channels that could be devoted to ethnic formats featuring Chinese, Greek, Japanese, Jewish, Filipino, Portuguese, Korean, Polish, Italian programming, as well as to cultural and music formats featuring Children's, Reggae, Literature/Drama, Folk and Polka programming.¹²⁵

The Commission should urge DARS applicants to make good on their promises to deliver such formats. If the American public is ultimately to suffer a reduction in local service by virtue of the creation of twenty to eighty new satellite DARS signals in each market, then the Commission at a minimum should exercise its public interest authority under Section 309(a) of the Communications Act to require satellite DARS applicants and licensees to comply with their promises for future performance, especially with respect to the format possibilities that purportedly differentiate the service so dramatically from terrestrial radio.

Under a "promise-versus-performance" approach -- somewhat akin in concept to the review the Commission historically conducted in broadcast renewal proceedings until broadcast stations were de-regulated in the mid-80's -- the Commission would not set minimum public interest program requirements, which, as the Notice observes, have proven to be constitutionally problematic.¹²⁶ Instead, the Commission would require satellite DARS licensees to provide the Commission in their applications (and to supplement on an annual basis) a comprehensive list of the programming offered or proposed to be offered on their systems, and to state concretely and specifically the ethnic and niche offerings they will provide. Satellite DARS licensees could be then be subjected to a periodic public interest review by the Commission to determine the extent to which the licensees have made reasonable and good

¹²⁵ See "Satellite Radio" (Sept. 7, 1994) (CD Radio ex parte filing), at 24-27.

¹²⁶ See Notice at ¶ 27; Daniels Cablevision, Inc. v. United States, 835 F. Supp 1 (D.D.C. 1993).

faith efforts to effectuate their proposals, and licensees would be obliged to justify any substantial variations from their programming proposals.¹²⁷

A streamlined "promise-versus-performance" requirement, properly implemented, will avoid the constitutional defects of content-based program set-asides. At the same time, it will help to ensure that satellite DARS licensees have been appropriately responsive to the needs of the numerous unserved or underserved constituencies that they have alleged will be so benefited by the introduction of satellite DARS service.¹²⁸ Given that this promise has been integral to the very authorization of satellite DARS,¹²⁹ it would be tragic indeed if a score or more new channels of satellite-delivered programming were dropped into every market which merely replicated the formats of terrestrial broadcasters, actively reduced the amount of local public service programming provided by terrestrial broadcasters, but introduced no

¹²⁷ See, e.g., West Coast Media, Inc., 79 FCC 2d 610, 614-15, aff'd, West Coast Media v. FCC, 695 F.2d 617 (1982) (describing Commission's general approach to promise versus performance in broadcast renewal proceedings).

¹²⁸ The NAB fully recognizes that in the broadcast deregulation proceedings, the Commission eliminated detailed programming proposals from its broadcast renewal and application processes, and as a consequence, no longer applies a formal "promise-versus-performance" standard to terrestrial radio and television licensees. See, e.g., Deregulation of Radio, 84 FCC 2d 968 (1981). The NAB is not here advocating that identical proposals or onerous quantitative inquiries be resurrected and applied to satellite DARS providers. But the NAB strongly believes that some mechanism should be implemented to ensure that satellite DARS providers deliver on their promises to serve those underserved or unserved constituencies of niche subscribers. A streamlined version of a promise-versus-performance obligation serves this objective. Satellite providers' follow-through on such claims -- which have been cited repeatedly as primary justifications for the satellite DARS spectrum allocation -- will again serve to differentiate satellite DARS from terrestrial radio in a manner that may help to mitigate the service's harmful impact on local programming.

¹²⁹ See, e.g., Report and Order, Gen. Docket 90-357 10 FCC Rcd at 2325, Separate Statement of Commissioner Rachelle B. Chong (noting that a "factor important in my decision to support satellite DARS is the fact that this service will have a nationwide or regional audience base" such that "DARS operators will be free to target their programming at audiences that may be underserved such as special interests or ethnic or racial groups that might not be large enough in a traditional broadcast community to support particularized programming. For example, operators might offer specialized programming targeted to foreign language communities such as those who speak Vietnamese or Armenian.").

countervailing public interest benefits. The Commission should make every effort to avoid such a result.

B. Licensing Approaches

There are three options proposed in Notice for licensing satellite DARS: 1) assign all available satellite DARS spectrum equally to the four applicants that filed in response to Commission's 1992 cut-off notice; 2) allocate part of the satellite DARS spectrum equally among the four applicants, and license the rest to new applicants (provided that there is enough spectrum to do so); and 3) re-open the satellite DARS processing window and allow additional applicants to file satellite DARS proposals. As set forth below, the NAB believes that Option 3 is by far the most desirable result from a public interest standpoint.

1. The Commission Should Open the Satellite DARS Spectrum to All Comers.

The new technology landscape has changed radically in the years since the Commission opened and closed a narrow application window for satellite DARS applications, and there is no sound policy reason that the universe of satellite DARS providers should be limited to four favored applicants who will simply be handed 50 MHz of extremely valuable spectrum. Licensing multiple applicants¹³⁰ will bring more diversity of viewpoint and business capability to the emerging DARS industry, and ultimately will allow the marketplace to determine the most efficient uses of the DARS spectrum.

The only reasons cited in the Notice for the Commission to adopt a contrary licensing approach are predicated on certain "equities" that purportedly attach to the four existing DARS

¹³⁰ The NAB believes that the 50 MHz of satellite DARS spectrum can accommodate 10 or 20 five MHz license blocks, depending on whether the Commission permits frequency re-use using orthogonal frequency polarization. See infra at pg. 58-59.

applicants by virtue of their having applied for DARS authorizations before spectrum was even allocated to the service.¹³¹ The NAB believes, however, that whatever "equities" may exist in favor of the present applicants are grossly disproportional to the enormous spectrum windfall the Commission would bestow upon them by guaranteeing them special spectrum allocations, and are far outweighed by the benefits and efficiencies that would be engendered by allowing other applicants to also apply for satellite DARS spectrum.

First, it is difficult to conceive of any "equities" that should guarantee satellite DARS spectrum to the current applicants when it has always been clear that these applicants proceeded at their own risk when they applied for licenses in a non-existent service.¹³² As the NAB has urged repeatedly, and the Commission has acknowledged, the construction and financing efforts of satellite DARS applicants to date do not and should not give them any equitable advantages in obtaining DARS licenses. The Commission made this point emphatically in its recent grant of CD Radio's request for waiver of Section 319(d) of the Communications Act, emphasizing that "any expenditures made pursuant to this waiver prior

¹³¹ See Notice at ¶¶ 33-36.

¹³² Choosing the Commission's first or second options cited in the Notice with respect to satellite DARS licensing would be tantamount to awarding the four pending DARS applicants "pioneer's preferences" in the satellite DARS service, i.e., the Commission would effectively guarantee them licenses based on some notion of equity arising from these parties' status as the first to apply for satellite DARS licenses. [See Pioneer's Preference Orders]. Yet, ironically, the Commission's treatment of pending PCS pioneer's preference awards is a precedent usefully applied to the instant proceeding. See New Personal Communications Services; Pioneer's Preference Review, 59 Fed. Reg. 42,521, 42,524 (August 18, 1994). In the PCS context, the Commission explicitly rejected the notion that the so-called "equities" of three pending pioneer's preference awards winners -- parties who underwent a three-year process for more contentious and protracted than the present DARS applicants -- could justify enriching them with spectrum licenses that were grossly disproportionate in value to their application and development efforts. See *Id.*, ¶ 16 ("On further reflection, we are convinced that the equities, considered more broadly, favor a policy requiring payment.") The same principle applies here, at least insofar as the present DARS applicants should not be unjustly enriched by being assigned exclusive chunks of spectrum without being subjected to the competitive fervor of competing applicants.

to the Commission action on the underlying application are solely at CD Radio's own risk" and "may not be relied upon by CD Radio in any way during the rulemaking and subsequent licensing process."¹³³ In fact, the Commission has expressly cited the possible re-opening of the satellite DARS processing round as one of the risk factors that the existing applicants have expressly assumed, both in deciding to proceed with premature construction of satellites and in advancing their applications at the Commission.¹³⁴ Given this assumption of risk, the current applicants cannot be heard to claim any equitable priority over new (and possibly more capable and efficient) applicants in the licensing process.

Second, for similar reasons, there appears to be little reason for the Commission to afford any of the present DARS applicants "protected" status on the basis of the Commission's issuance of the 1992 cut-off notice.¹³⁵ Once again, whether or not it was ill-advised to do so, the Commission issued this cut-off notice at a time when there was no spectrum even allocated to satellite DARS service and when there were no service or licensing rules in place governing the processing of satellite DARS applications. Although the Notice characterizes the cut-off notice as "fully consistent with the procedures previously used in establishing other satellite

¹³³ In re Satellite CD Radio, Inc. Requests for Section 319(d) Waiver, File Nos. 8-DSS-MISC-91(2), 47-DSS-MISC-93, DA 95-1908 (released Sept. 5, 1995) (emphasis in original).

¹³⁴ Id., at n. 5.

¹³⁵ The Commission has clear legal authority to waive or re-open the satellite cut-off date, and to accept new satellite DARS applications. Reviewing courts have held that the Commission's use of a cut-off procedure is a procedural rule rather than a rule affecting the substantive rights of a party, and generally accord great leeway to the agency's decision to re-open or waive a cut-off rule, provided the agency has done so in a manner that is not arbitrary and capricious. See Neighborhood TV Co. v. FCC, 742 F. 2d 629 (D.C. Cir. 1984) (holding that both delay of an application and subjecting the application to greater competition only incidentally affect an applicant's substantive interests); The Commission has been expressly delegated by Congress broad discretion in determining "the manner of conducting its business that would most fairly and reasonably accommodate the proper dispatch of its business and the ends of justice. FCC v. Schreiber, 381 U. S. 279 (1965); See 47 U.S. C § 154 (j).

services," the record is clear that none of the applicants has ever relied upon -- nor has ever been capable of relying upon -- any particularized set of processing procedures (satellite or otherwise) in a manner that should compel cut-off protection. CD Radio itself contended last year, for example, in seeking a declaratory ruling to permit the company to issue additional shares of common stock, that "it is not yet clear that [Part 25 satellite processing procedures] or any similar rule is or will be applicable to Satellite DARS applications," and argued that "the Commission has yet to adopt rules to govern satellite DARS."¹³⁶ Given this acknowledgment, it is difficult for CD Radio to contend that there have been any "equities" inspired by its "reliance on continued Commission adherence to the satellite cut-off model."¹³⁷

Third, with all due respect to Commissioner Quello, who has expressed the view that it would be "inequitable" to do anything other than grant the current applications,¹³⁸ this case is quite different from prior situations that the Commission has confronted with respect to pending applications for either cellular unserved areas or wireless cable (MDS) licenses. In both of those cases, the Commission decided to protect sets of pending applications only after it found 1) that the applicants had relied on plainly articulated, clearly defined licensing procedures -- lotteries -- in services for which spectrum had long since been allocated; 2) that it would be "administratively burdensome" to change its licensing approach with respect to the

¹³⁶ Satellite CD Radio, Inc., Request for Declaratory Ruling or Exemption Under Section 25.116(c)(2) (Feb. 2, 1994), at 8.

¹³⁷ Notice at ¶ 35.

¹³⁸ See Id., Separate Statement of Commissioner James H. Quello.

pending applications; and 3) that the licenses at issue were of "questionable commercial value."¹³⁹

None of those conditions obtains here. Once again, unlike the above two cases, the present satellite DARS applicants cannot be said to have relied in any sense on any method of satellite DARS licensing because no such method even existed at the time these applicants filed their applications; indeed, at that time, spectrum had not been allocated to the satellite DARS service. In addition, with only four pending satellite DARS applications, the administrative burden of re-opening the processing round in this case would be minimal, especially when compared to the benefits that would flow from allowing other players to bring their expertise and resources to the provision of satellite DARS.

The Commission has broad discretion at this juncture to establish its licensing approach to satellite DARS, and there is no "equitable" basis for unjustly enriching four favored satellite DARS applicants at the public's expense. The Commission should maximize the participation of as many parties as possible in the satellite DARS licensing process, and allow as many

¹³⁹ In Cellular Unserved Areas, for example, the Commission acted to protect reliance interests when it decided that, with respect to applications filed before July 26, 1993, it would continue awarding cellular licenses for unserved area by lottery. The Commission did so, however, based on the fact that the cellular applicants had plainly relied on "existing lottery procedures." See In the Matter of Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, Memorandum Opinion and Order, 9 FCC Rcd 7387, 7391 (1994) at ¶ 13. In addition, the Commission pointed out that moving away from lotteries in the unserved area context would have created an enormous administrative upheaval and delay -- including the refund of some 10,000 application fees -- with little or no corresponding public benefit. See Id., at 7391-92, ¶ 14. Finally, the Commission decided to maintain lotteries because the licenses at issue were of "questionable commercial value." Id., at 7392, ¶ 15. The Commission relied on nearly identical factors in its MDS decision, as well. See [Amendment of Parts 21 and 74 of the Commission's Rules with Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service], MM Docket No. 94-31 (released June 30, 1995), at MM Docket 89-90 (citing reliance on lottery procedures, high administrative cost, and low commercial value of mos licenses at issue).

qualified parties as possible bring their competitive strengths to bear in the satellite radio marketplace.

C. Licensing Procedures and Technical Rules

1. Proposed Satellite DARS Channel Plans

Given the NAB's view that the 50 MHz of satellite DARS is best and most efficiently utilized by opening up the satellite DARS spectrum and accommodating as many licensees as possible, the NAB proposes below two channel plans that are consistent with this licensing approach.

In the first plan, shown in Figure 1 below, ten frequency blocks (labeled 1 - 10), each 5 MHz wide, are available for license. This plan assumes that, within the frequency band, only a single orthogonal frequency polarization (either LHCP or RHCP) is licensed:

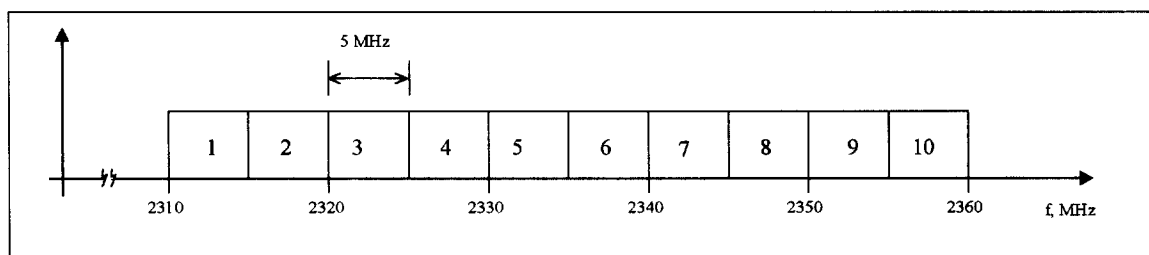


Figure 1. Frequency plan without licensed frequency re-use

The second plan, shown in Figure 2, will accommodate 19 licenses, again based on a 5 MHz allocation. In this case, however, LHCP and RHCP are treated as distinct frequency resources, separately allocable. The center frequencies of even- and odd-numbered blocks are staggered to reduce the magnitude of the co-channel interference, which will unavoidably exist in a frequency re-use environment:

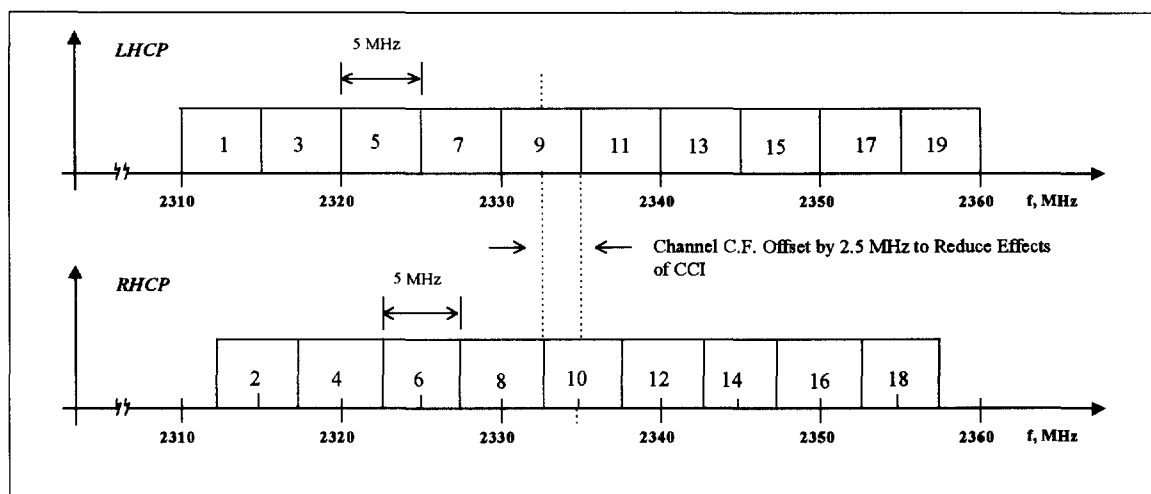


Figure 2. Frequency plan with licensed frequency re-use

The primary difference between the above two plans is that one allows for frequency re-use (utilizing orthogonal frequency polarization) by allocation and one does not. The plans are based upon a 5 MHz block size, which, based upon the NAB's review of those satellite DARS applications that have been already submitted to the Commission, appears to represent a viable allocation.¹⁴⁰ Under both plans, satellite DARS proponents who rely on spatial diversity

¹⁴⁰ See, e.g., Application of AMRC, December 15, 1992 at 7, *Notice* at ¶ 39 (satellite DARS channel plan could consist of 5 MHz blocks); see also Application of Loral Aerospace Holdings, Inc. (Dec. 15, 1992), at 5-1 ("The LAHI system requires only 6 MHz of spectrum for 32 channels of CD quality stereo.") *Notice* at 31 (noting that ATV Grand Alliance system claims to offer 75 CD quality stereo channels in 6 MHz of spectrum). In CD Radio's *Compendium of Applications* September 14, 1995 at 24 the stated bandwidth per channel is 8 MHz. However Figure 1, which accompanies this text, shows that the 50 MHz DARS band would accommodate only 5 such channels (for LHCP) illustrating a *de facto* 10 MHz bandwidth requirement per channel. This 10 MHz requirement would be achievable under the NAB recommendation if CD Radio were to acquire consecutive 5 MHz

would most likely need to acquire multiple frequency blocks, depending on the design of their systems.

In addition, the plans also reflect the NAB's view that the entire 50 MHz of satellite DARS spectrum should be allocated, since coordination issues associated with the lowest 10 MHz of the band can be addressed with varying degrees of success by the marketplace, depending on the license allocation method chosen.

2. Terrestrial Gap Fillers

The NAB is opposed to the use of terrestrial "gap-fillers" or "repeaters" by satellite DARS providers because such use would effectively transform the satellite DARS service into a terrestrial-based one. Satellite DARS providers should be prohibited from using terrestrial spectrum, in the form of gap fillers, to overwhelm large markets in which competition and diversity are plentiful to begin with.

3. 7 GHz Feeder Links

In the Notice, the Commission suggests that, in some geographic areas, a carefully engineered and coordinated satellite DARS feeder link may be able to co-exist with Broadcast Auxiliary Service (BAS) stations operating in the 7 GHz microwave band.¹⁴¹ While this might be true for some smaller markets, for others, especially medium and large markets, it will not

blocks and consequently the 5 MHz block size is consistent with the service CD Radio wishes to provide. In case of Promosphere (see Application of Primosphere Limited Partnership, December 15, 1995 at 29) it is described how their system involves "...multiplexing four 384 kbps stereo music channels ...[resulting in]... an assigned bandwidth of 4 MHz per transponder." This 4 MHz requirement would be met by a 5 MHz block size, though with some loss of efficiency. NAB notes, however, that were Primosphere to multiplex five 384 kbps stereo music channel (rather than 4) and apply the same coding and guard bands as were applied to the 4-channel case, then this hypothetical signal would require almost exactly 5 MHz of bandwidth, and therefore with slight system modification the 5 MHz block size would appear to be reasonable choice for this service, as well.

¹⁴¹ Notice at ¶ 73.

be possible for DARS feeder links to operate in the 7 GHz band because of microwave congestion.

In a separate proceeding, the Commission is considering reallocation of a significant amount of 2 GHz BAS spectrum for use by Mobile Satellite Service (MSS) licensees. In addition, S. 652 the senate Telecommunications Bill currently under consideration by Congress contains a provision to clear an additional 50 MHz in the 2 GHz band.¹⁴² Should broadcasters and other users of the 2 GHz band ultimately be displaced, the Commission should expect that a significant number of dislocated 2 GHz broadcast auxiliary users may migrate to the 7 GHz broadcast auxiliary band. The Commission should thus remain cognizant of this fact as it considers the use of 7 GHz spectrum for satellite DARS feeder links, and it should make no changes to its rules that would cause any interference to existing or future 7 GHz broadcast auxiliary operations.

Ultimately, the NAB believes that there is a significant potential for DARS feeder links to cause interference to 7 GHz BAS stations. The Commission should therefore encourage DARS licensees to use other bands available for fixed satellite use. If DARS licensees do elect to operate feeder links in the 7 GHz band, the Commission should specifically require coordination with BAS and other incumbent microwave stations in that band.

VII. Conclusion

NAB has here submitted evidence of the wealth of local service and local diversity that traditional radio provides for communities across America. NAB has also submitted

¹⁴² See Notice of Proposed Rule Making, ET Docket No. 95-18, 10 FCC Rcd 3230 (1995). See also H.R. 1555, 104th Cong., 1st Sess. (1995) and S. 652, 104th Cong. 1st Sess. (1995)..

evidence of the severe impact that an unrestricted satellite DARS service would cause to local radio stations, most particularly to those in small markets, and to the local service and local diversity in these communities. We have shown that the real benefits of a satellite DARS service would be too few to justify the costs to the public interest of diminished local Service. NAB therefore respectfully requests that the Commission reconsider its proposal to authorize a satellite DARS service. NAB urges that the Commission, at the very least, adopt DARS rules and service requirements ensuring that satellite DARS develops as a service that is more complementary than destructive to the local radio service and the invaluable public benefits it provides.

Respectfully submitted,

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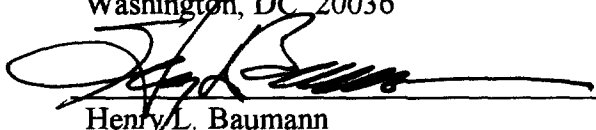
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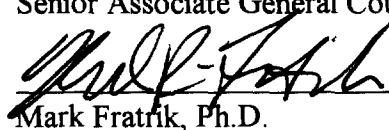
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September 15, 1995

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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

**FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY**

In the Matter of

**Establishment of Rules and Policies
for the Digital Audio Radio Satellite
Service in the 2310-2360 MHz
Frequency Band**

)
) **IB Docket No. 95-91**
) **GEN Docket No. 90-357**
) **RM No. 8610**
) **PP-24**
) **PP-86**
) **PP-87**

**ATTACHMENTS
TO THE
COMMENTS OF THE
NATIONAL ASSOCIATION OF BROADCASTERS**

September 15, 1995

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**LOCAL PERSPECTIVES ON LOCALISM
IN BROADCASTING AND THE ADVERSE
IMPACT OF SATELLITE DARS**

JOHN HARING

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A STUDY PREPARED FOR
NATIONAL ASSOCIATION OF BROADCASTERS

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Executive Summary

Local Perspectives on Localism in Broadcasting and the Adverse Impact of Satellite DARS

This report consists of a set of six case studies of individual, small-town radio markets located around the country. The purpose of the study is to present information on the operating conditions that currently prevail in the commercial radio broadcast industry, the role local radio stations play as a force for enlightenment and cohesion in the communities in which they operate, and the potential impact satellite DARS will have on local, community-oriented radio service. The case studies were developed on the basis of interviews with local broadcasters, government officials and representatives from private and public enterprise in the various localities. The studies consist in large measure of statements by these individuals.

The picture that emerges from these studies is one of a highly competitive radio broadcasting industry that supplies local listeners with a broad diversity of choices among program formats and has been highly creative in finding ways to provide local public service in a deteriorating economic environment. Heavy competition has compelled local radio stations to find ways to economize on costs while still satisfying their mandates to meet the communications needs of the communities they are licensed to serve.

Study participants perceive that implementation of satellite DARS will necessarily compel additional efforts to economize on programming costs as the available audience is further fractionalized. Their belief is that, in the absence of alternative sources of supply, communities will inevitably suffer degradation in the local community services they receive and that this will harm the local community's ability to cohere and prosper as a unique place. There is a clearly perceived tension between any benefits of a new national service and effective maintenance of the benefits of local radio broadcast services to individual local communities.

Many study participants express the view that satellite DARS will compel local radio broadcasters to become to a much greater extent simple conduits for national or regional program services with much less local involvement.

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Local Perspectives on Localism in Broadcasting and the Adverse Impact of Satellite DARS

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"There is no such thing as a free lunch."

Introduction

In economic theory, efficiency is usually defined in terms of Pareto optimality — the existence of circumstances where it is impossible through a change in the allocation of scarce economic resources to make at least one party better off without making someone else worse off.¹ A Pareto optimal change is one which makes at least one party better off without making *anyone* else worse off. Genuinely Pareto optimal change is exceedingly rare because most economic changes involve both gains *and* losses. Generally speaking, achieving more of some desired objective usually entails *sacrificing* some of the benefits of some other desired objectives. Evaluation of economic changes that benefit some individuals and hurt others — the typical circumstance — raises some very difficult analytical issues. For example, such evaluations require that policymakers make what economists refer to as "interpersonal utility comparisons," comparisons which are not required in the case of Pareto optimal changes involving, by definition, only gains.

When there are gains and losses affecting different individuals, the question naturally arises as to whether what the gainers gain is worth more than what the losers lose, and this is generally *not* a simple matter of evaluating the dollar-denominated value of gains or losses. For example, if the losers are relatively poor and the gainers are relatively rich, it might be argued that the *disutility* of the dollar losses the losers

¹ This definition of efficiency is named after Vilfredo Pareto, an Italian mathematician-economist, who conceived the idea in the early 1900s. Obviously economic welfare has not been maximized if it is possible through a reallocation of resources to make someone better off without making anyone else worse off.

suffer is greater than the utility of the dollar gains the gainers reap — even if the estimated dollar losses of the losers are *less* than the dollar gains of the gainers.²

Because most economic change is not Pareto optimal in the pure sense, good economic policymaking requires a careful weighing of both the beneficial and adverse consequences of change. Only by carefully analyzing both the positive and negative impacts (*i.e.*, the *full* consequences) of proposed changes can policymakers avoid taking actions which reduce economic and social welfare. Careful analysis of economic tradeoffs may also permit policymakers to condition economic changes in such a way as to alter the terms of any implied tradeoffs and thereby maximize net benefits/minimize net losses (*viz.*, figuratively, to find ways to save the baby while draining the bath water).

In its Notice, the Commission clearly recognizes that the introduction of satellite DARS potentially represents a decidedly *non*-Pareto optimal change. Notwithstanding the natural proclivity of DARS proponents to accentuate the positive and downplay the negative aspects of the proposed service, the Commission in its Notice has asked for information about the potential adverse consequences of DARS, precisely the kind of information it needs to engage in informed deliberations and a rational decisionmaking process.

The Commission (at ¶ 11) notes that “the economic impact of satellite DARS on existing radio broadcasters is relevant to this inquiry to the extent that such impact would predictably lead to serious loss of important services to consumers. . . .” The Commission (at ¶ 13) explicitly notes that “initiation of satellite DARS may not be without some costs to local broadcasters, particularly in the area of their advertising

² This argument is premised on the idea that the value of a dollar is greater to a poorer person than a richer one. This may, of course, not be so. When the dollar value of gains exceeds the dollar value of losses, the gainers can, *in principle*, compensate the losers and still be better off, and such a change is, in this sense, *potentially* Pareto optimal. Whether it is actually Pareto optimal depends, *inter alia*, on whether adequate compensation actually occurs.

revenues.” The Commission thus solicits “comment on the potential and likelihood of such an impact, and its effect, if any, on the continued financial viability of traditional broadcasting and on the amount of local and public affairs programming that traditional broadcasters provide.” The Commission (at ¶ 18) seeks “comment on whether any stations might offer less local programming or go off the air as a result of competition from satellite DARS service.” The Commission (at ¶ 19) seeks comment on how adverse financial impact on local terrestrial broadcasters “would affect the public interest” and “local broadcasters’ ability to continue to serve the public interest.” Finally, the Commission (at ¶ 20) seeks comment on “appropriate ways to evaluate effects of satellite DARS on local broadcasting.”

This report supplies information and comment directly relevant to this set of issues raised by the Commission. To understand in concrete terms what differences satellite DARS would make in terms of the Commission’s expressed concerns and interests, we have undertaken case studies of six specific radio markets spread across the country. We have traveled to five of these markets to interview radio broadcasters and a variety of business and community leaders about their perceptions of the role local radio broadcasting plays in the economy and civic life of their communities.³ We have asked them for their assessment of what difference it would make were local stations economically weakened as a result of significant market penetration by satellite DARS. This report summarizes what we have discovered as a result of this extensive field effort.

³ In one instance (Coudersport, Pennsylvania), we relied on telephone interviews.